

REMARKS

This Response is being filed within three months of the Office Action dated January 29, 2007. No new claims have been added. Claims 30 and 36 have been amended. Claim 35 has been canceled. No additional fees are required.

Claims 12-20, 30-34 and 36 are pending in the application. Claims 12, 30 and 36 are in independent form.

In the Office Action dated January 29, 2007, the Examiner rejected claims 12-20 and 35 under 35 U.S.C. 112, second paragraph, as allegedly being indefinite because the Examiner states "it is unclear what 40% is a % of-the total repellent composition?" Applicant submits that 40% is a percentage of the total repellent composition. This definition is supported by Applicant's specification as originally filed. Page 13, lines 27-29 of Applicant's specification as originally filed recites "[A] weight percentage of shellfish waste in a range of 40 to 90%, and a weight percentage of binder in a range of 10 to 60% will function to produce a controllant having the desired properties." (emphasis added). Page 16, lines 10-11 recite "The ground mussel is 2199 grams of the total 4619 grams and therefore is approximately 47.60% of the dry formulation." (emphasis added).

Applicant requests the Examiner to withdraw the rejection of claims 12-20 (claim 35 has been canceled)

under 35 U.S.C. 112, second paragraph, because Applicant believes that the term "40%" is definite.

In the Office Action dated January 29, 2007, the Examiner rejected claims 12-14, 17-20 and 30-36 under 35 U.S.C. 102(b), as allegedly being anticipated by Oh (U.S. Pat. No. 3,980,773). The Examiner states that Oh discloses that 85% of the solids of its repellent composition is ground shrimp.

Upon further study of Oh, Oh discloses that its repellent composition is 20% solids, and that 85% of the solids portion of its repellent is ground shrimp (Oh, column 12, lines 57-61). Accordingly, Oh discloses a repellent that is less than 20% ground shrimp.

In contrast, as stated above, Applicant's claims recite a repellent composition wherein at least 40% of the repellent is shellfish waste material. Applicant's specification as originally filed states on page 13, lines 27-29, "[A] weight percentage of shellfish waste in a range of 40 to 90%, and a weight percentage of binder in a range of 10 to 60% **will function to produce a controllant having the desired properties.**" (emphasis added).

Oh does not teach or suggest Applicant's weight percentage of its ground shrimp. Case law clearly states that a difference in percentages of compositional elements in chemical cases is a basis for patentability. In re Antonie, 559 F.2d 618, 620 (Cust. & Pat. App. 1977) (changed concentration in chemical case results in

patentable claims). Accordingly, Applicant requests the Examiner to withdraw the rejection of independent claims 12, 30 and 36 and corresponding dependent claims 13-20, and 31-34 under 35 U.S.C. 102(b), and to allow these claims.

Conclusion

The claims are believed to be in condition for allowance and Applicant respectfully requests the same. If the Examiner should have any questions regarding this response, a call to Applicants counsel, Ms. Ingrid M. McTaggart at (503) 230-7934, is respectfully requested.

Respectfully submitted,

  
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